

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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| PETALS DECORATIVE ACCENTS LLC, | : | |
| | : | |
| Plaintiff, | : | <u>REPLY TO</u> |
| | : | <u>COUNTERCLAIMS</u> |
| -against- | : | |
| | : | |
| THE ELEVATION GROUP LLC, CONTROL | : | Index No. 07CV8120(HB) |
| SOLUTIONS INC., IMAGESOFT INC., TONY | : | |
| YENIDJEIAN and DINESH BAKHRU, | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

Plaintiff, PETALS DECORATIVE ACCENTS LLC, (hereinafter "Petals" or "Plaintiff")
by its attorneys, Gersten Savage, LLP, as and for its Reply to Counterclaims asserted by
Defendant Control Solutions, Inc., alleges as follows:

FIRST COUNTER-CLAIM FOR BREACH OF CONTRACT

1. Denies the allegations contained in paragraph 1 except admits that defendant Control Solutions, Inc. ("Control Solutions") did provide certain services to plaintiff.
2. Admits the allegations contained in paragraph 2.
3. Admits the allegations contained in paragraph 3.
4. Denies the allegations contained in paragraph 4.
5. Denies the allegations contained in paragraph 5.
6. Denies the allegations contained in paragraph 6 except admits that Control Solutions has demanded payment from Petals.
7. Denies the allegations contained in paragraph 7.

8. Denies the allegations contained in paragraph 8 except admits that Control Solutions has invoiced plaintiff.
9. Denies the allegations contained in paragraph 9.
10. Denies the allegations contained in paragraph 10.
11. Denies the allegations contained in paragraph 11.

SECOND COUNTER CLAIM FOR UNJUST ENRICHMENT

12. Admits the allegations contained in paragraph 13.
13. Denies the allegations contained in paragraph 14.
14. Denies the allegations contained in paragraph 15.
15. Denies the allegations contained in paragraph 16.
16. Denies the allegations contained in paragraph 17.

**THIRD COUNTER CLAIM FOR BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR DEALING**

17. Denies the allegations contained in paragraph 19.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. Control Solution's counter-claims are barred by the doctrines of laches, unclean hands, estoppel and waiver.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. Control Solution's counter-claims fail to state a claim upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Control Solution's counter-claims are barred by the statute of frauds.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. Control Solution's counter-claims are barred due to a lack of consideration.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Control Solution's counter-claims are barred by reason of Control Solution's material breach of contract.

WHEREFORE, plaintiff, Petals Decorative Accents LLC, demands judgment in its favor and against the defendant/counter-claimant, Control Solutions, Inc., dismissing the counter-claims in their entirety with prejudice and awarding attorneys' fees and costs as well as such other and further relief as this Court deems equitable and just.

Dated: November 21, 2007

GERSTEN SAVAGE, LLP
Attorneys for Plaintiff

By:



David Lackowitz (DL 8591)
600 Lexington Avenue, 9th Floor
New York, N.Y. 10022
(212) 752-9700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of November, 2007, a true and correct copy of the foregoing Reply to Counterclaims was served electronically upon the Court and the following counsel:

Paul G. McCusker, Esq.
McCUSKER, ANSELM, ROSEN &
CARVELLI, P.C.
Attorneys for Defendant The
Elevation Group LLC
127 Main Street
Chatham, New Jersey 07928
(973) 635-6300

Elliot J. Stein, Esq.
STEVENS & LEE
A Pennsylvania Professional Corporation
Attorneys for Defendant Control
Solutions, Inc.
85 Madison Avenue, 20th Floor
212-319-8500

Barry Levin
Attorney for Defendants Imagesoft, Inc.
And Dinesh Bakhru
600 Old Country Road, Ste 333
Garden City, New York 11530
516-222-4500

and by certified mail, return receipt requested, on:

Tony Yenidjian
Defendant Pro Se
13 Dawn Lane
Suffern, New York 10901

GERSTEN SAVAGE LLP
Attorneys for Plaintiff
600 Lexington Avenue
New York, New York 10022
212-752-9700

By: 
David Lackowitz (DL-8591)

Dated: November 21, 2007